

2152.210-70

or fraudulent certification may render the Contractor subject to prosecution under section 1001, title 18, United States Code.

(b) The Contractor shall provide immediate written notice to the Contracting Officer if, at any time, the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A Contractor's certification that any of the actions mentioned in the certification exists will not necessarily result in termination of the contract. However, the certification, or the Contractor's failure to provide such additional information as requested by the Contracting Officer will be considered in connection with a determination of the Contractor's responsibility under LIFAR subpart 2109.70, Minimum Standards for FEGLI Program Contractors.

(d) Nothing contained in the certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this section. The knowledge and information of the Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in this section is a material representation of fact upon which reliance is placed by the Contracting Officer in making this contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract for default.

(End of clause)

2152.210-70 Investment income.

As prescribed in 2110.7004(a), insert the following clause:

INVESTMENT INCOME (OCT 2005)

(a) The Contractor must invest and reinvest all FEGLI Program funds on hand until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the Contractor must seek to maximize investment income. However, the Contractor will not be responsible for any actions taken at the direction of OPM.

(b) All investment income earned on FEGLI Program funds shall be credited to the FEGLI Program.

(c) When the Contracting Officer concludes that the Contractor failed to comply with paragraph (a) or (b) of this clause, the Contractor must pay to OPM the investment income that would have been earned, at the rate(s) specified in paragraph (d) of this clause, had it not been for the Contractor's

48 CFR Ch. 21 (10-1-12 Edition)

noncompliance. *Failed to comply with paragraph (a) or (b) of this clause means:*

(1) Making any charges against the contract which are not actual, allowable, allocable, or reasonable; or

(2) Failing to credit any income due the contract and/or failing to place funds on hand, including premium payments and payments from OPM not needed to discharge promptly the obligations incurred under the contract, tax refunds, credits, deposits, investment income earned, uncashed checks, or other amounts owed OPM in income-producing investments and accounts.

(d)(1) Investment income lost as a result of unallowable, unallocable, or unreasonable charges against the contract shall be paid from the 1st day of the contract term following the contract term in which the unallowable charge was made and shall end on the earlier of: (i) The date the amounts are returned to OPM; (ii) the date specified by the Contracting Officer; or, (iii) the date of the Contracting Officer's Final Decision.

(2) Investment income lost by the Contractor as a result of failure to credit income due under the contract or failure to place funds on hand in income-producing investments and accounts must be paid from the date the funds should have been invested or appropriate income was not credited and will end on the earlier of:

(i) The date the amounts are returned to OPM;

(ii) The date specified by the Contracting Officer; or

(iii) The date of the Contracting Officer's final decision.

(3) The Contractor shall credit to the FEGLI Program income that is due in accordance with this clause. All amounts payable shall bear lost investment income compounded semiannually at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (Pub. L. 95-563), *during* the periods specified in paragraphs (d)(1) and (d)(2).

(4) All amounts due and unpaid *after* the periods specified in paragraphs (d)(1) and (d)(2) shall bear simple interest at the rate applicable for each 6-month period as fixed by the Secretary of the Treasury until the amount is paid [see FAR 32.614-1].

(End of clause)

[58 FR 40381, July 28, 1993, as amended at 70 FR 41154, July 18, 2005]

2152.210-71 Notice of significant events.

As prescribed in 2110.7004(b), insert the following clause:

Office of Personnel Management

2152.216-70

NOTICE OF SIGNIFICANT EVENTS (OCT 2005)

(a) The Contractor agrees to notify OPM of any significant event within 10 working days after the Contractor becomes aware of it. As used in this section, a "significant event" is any occurrence of anticipated occurrence that might reasonably be expected to have a material effect upon the Contractor's ability to meet its obligations under this contract, including, but not limited to, any of the following:

(1) Disposal of 25 percent or more of the Contractor's assets within a six-month period;

(2) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Contractor's obligations under this contract;

(3) Loss of 20 percent or more of FEGLI Program reinsurers in a contract year;

(4) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;

(5) The withdrawal of, or notice of intent to withdraw, by any State or the District of Columbia, its license to do life insurance business or any other change of life insurance status under State law;

(6) The Contractor's material default on a loan or other financial obligation;

(7) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Contractor's facilities or facilities used by the Contractor in the performance of the contract;

(8) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Contractor's participation in the Federal Employees' Group Life Insurance Program;

(9) Any significant changes in policies and procedures or interpretations of the contract which would affect the benefits payable under the contract or the costs charged to the contract;

(10) Any fraud, embezzlement or misappropriation of FEGLI Program funds; or

(11) Any written exceptions, reservations, or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Contractor to provide an audit opinion on the annual financial report required by OPM for the FEGLI Program. Accounting firm employees must audit the report in accordance with Generally Accepted Government Auditing Standards or other requirements issued by OPM.

(b) Upon learning of a significant event, OPM may institute action, in proportion to the seriousness of the event, to protect the interest of insureds, including, but not limited to—

(1) Directing the Contractor to take corrective action; or

(2) Making a downward adjustment to the weight in the "Contractor Performance" factor of the service charge.

(c) Prior to taking action as described in paragraph (b) of this clause, OPM will notify the Contractor and offer an opportunity to respond.

(d) The Contractor agrees to insert this clause in any subcontract or subcontract modification when the amount of the subcontract or modification that is charged to the FEGLI Program contract exceeds \$550,000 and is at least 25 percent of the total cost of the subcontract.

(End of clause)

[58 FR 40381, July 28, 1993, as amended at 70 FR 41155, July 18, 2005]

2152.215-70 Contractor records retention.

As prescribed in 2115.071, insert the following clause:

CONTRACTOR RECORDS RETENTION (OCT 2005)

Notwithstanding the provisions of FAR 52.215-2(f), "Audit and Records—Negotiation," the Contractor must retain and make available all records applicable to a contract term that support the annual financial report for a period of 5 years after the end of the contract term to which the records relate. Claim records must be maintained for 10 years after the end of the contract term to which the claim records relate. If the Contractor chooses to maintain paper documents in electronic format, the electronic version must be an exact replica of the paper document.

(End of clause)

[70 FR 41155, July 18, 2005]

2152.216-70 Fixed price with limited cost redetermination—risk charge.

As prescribed in 2116.270-1(a), insert the following clause when a risk charge is negotiated:

FIXED PRICE WITH LIMITED COST REDETERMINATION PLUS FIXED FEE CONTRACT—RISK CHARGE (OCT 2005)

(a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a risk charge. OPM will pay the Contractor the risk charge as specified in a letter from the Contracting Officer.